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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/507,231	09/09/2004	Rona L. Reid	62413A	2122

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THE DOW CHEMICAL COMPANY  
INTELLECTUAL PROPERTY SECTION,  
P. O. BOX 1967  
MIDLAND, MI 48641-1967

EXAMINER
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KHAN, AMINA S

ART UNIT	PAPER NUMBER
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1751

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/29/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/507,231	<b>Applicant(s)</b> REID ET AL.	
	<b>Examiner</b> Amina Khan	<b>Art Unit</b> 1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 9/9/2004.
- 2a) ☐ This action is **FINAL**.      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/11/2005</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Specification*

1. The abstract of the disclosure does not commence on a separate sheet in accordance with 37 CFR 1.52(b)(4). A new abstract of the disclosure is required and must be presented on a separate sheet, apart from any other text.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-5,7-9,11-15,17,18 and 19 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Davis, Jr. et al. (US 5,350,423).

Davis, Jr. et al. teach woven stonewashed denim fabrics (column 3, lines 15-65).

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In claims 1-5 and 7-9, the limitations "capable of surviving treatment" are simply functional language and do not distinguish the articles structurally from the prior art. It would be expected that the denims of Davis, Jr. et al. would inherently possess these characteristics.

In the alternative, it would have been obvious that the denims of Davis, Jr. et al. would encompass the claimed limitations because Davis, Jr. et al. teach similar denim products for similar utilities.

Claims 11-15 and 17 are product by process claims. Any difference imparted by the product by process limitations would have been obvious to one having ordinary skill in the art at the time the invention was made because where the examiner has found a substantially similar product as in the applied prior art, the burden of proof is shifted to the applicant to establish that their product is patentably distinct, not the examiner to show the same process of making. The burden is on applicants to show product differences in product by process claims, see *MPEP sections 2112, 2113 and 2114*.

Regarding the limitation of uniform or rental uniform, these are simply intended uses it would be obvious to use stone washed garments in uniforms or rental uniforms.

5. Claims 1-4, 7-10, 11-16, 18 and 19 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Stutz (US 3,396,529).

Stutz teaches woven or knitted elastic used for swimwear and sportswear (column 2, lines 5-15).

In claims 1-4 and 7-10, the limitations "capable of surviving treatment" are simply functional language and do not distinguish the articles structurally from the prior art. It would be expected that the elastic swimwear of Stutz would inherently possess these characteristics.

In the alternative, it would have been obvious that the elastic swimwear of Stutz would encompass the claimed limitations because Stutz teach similar elastic products for similar utilities.

Claims 11-16 are product by process claims. Any difference imparted by the product by process limitations would have been obvious to one having ordinary skill in the art at the time the invention was made because where the examiner has found a substantially similar product as in the applied prior art, the burden of proof is shifted to the applicant to establish that their product is patentably distinct, not the examiner to show the same process of making. The burden is on applicants to show product differences in product by process claims, see *MPEP sections 2112, 2113 and 2114*.

Regarding the limitations of uniform or rental uniform, these are simply intended uses it would be obvious to use elastic swimwear or sportswear in uniforms or rental uniforms.

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6. Claims 1-4,7-10,11-16,18 and 19 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over the mopublishing document (<http://www.mopublishing.com/siswimsuit1998.htm>).

The mopublishing website teaches swimwear (see pictures).

In claims 1-4 and 7-10, the limitations "capable of surviving treatment" are simply functional language and do not distinguish the articles structurally from the prior art. It would be expected that the elastic swimwear of the mopublishing website would inherently possess these characteristics.

In the alternative, it would have been obvious that the elastic swimwear of the mopublishing website would encompass the claimed limitations because the mopublishing website teach similar products for similar utilities.

Claims 11-16 are product by process claims. Any difference imparted by the product by process limitations would have been obvious to one having ordinary skill in the art at the time the invention was made because where the examiner has found a substantially similar product as in the applied prior art, the burden of proof is shifted to the applicant to establish that their product is patentably distinct, not the examiner to show the same process of making. The burden is on applicants to show product differences in product by process claims, see *MPEP sections 2112,2113 and 2114*.

Regarding the limitations of uniform or rental uniform, these are simply intended uses it would be obvious to use elastic swimwear in uniforms or rental uniforms.

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7. Claims 1-4,6-9,11-15 and 18-20 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Ho et al. (WO 99/63021).

Ho et al. teach elastic articles comprising homogeneously branched ethylene polymer wherein good elasticity is maintained after laundering (abstract). Ho further teaches the use of these fabrics in clothing, lab coats, surgical gowns and sports apparel (page 47, paragraph 2). Ho et al. further teach the elastic articles exhibit excellent elasticity at elevated temperatures as well as excellent wash and dry stability (page 8, paragraph 3). Ho et al. further teach woven fabrics (page 49, paragraph 4).

In claims 1-4 and 6-9, the limitations "capable of surviving treatment" are simply functional language and do not distinguish the articles structurally from the prior art. It would be expected that the elastics of Ho et al. would inherently possess these characteristics.

In the alternative, it would have been obvious that the elastics of Ho et al. would encompass the claimed limitations because Ho et al. teach similar elastic products for similar utilities.

Claims 11-15,18,19 and 20 are product by process claims. Any difference imparted by the product by process limitations would have been obvious to one having ordinary skill in the art at the time the invention was made because where the examiner has found a substantially similar product as in the applied prior art, the burden of proof is shifted to the applicant to establish that their product is patentably distinct, not the examiner to show the same process of making. The burden is on applicants to show

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product differences in product by process claims, see *MPEP* sections 2112, 2113 and 2114.

Regarding the limitation of uniform or rental uniform, these are simply intended uses it would be obvious to use lab coats and surgical gowns in uniforms or rental uniforms.

8. Claims 1-4, 7, 11, 12 and 15 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Schilit (US 3,097,192).

Schilit teaches producing elastic and washing them with 24 cycles of laundry such that the fibers have 96% tensile recovery (column 8, example I; column 11, example IX).

In claims 1-4 and 7, the limitations "capable of surviving treatment" are simply functional language and do not distinguish the articles structurally from the prior art. It would be expected that the elastics of Schilit would inherently possess these characteristics.

In the alternative, it would have been obvious that the elastics of Schilit would encompass the claimed limitations because Schilit teach similar elastic products for similar utilities.

Claims 11, 12 and 15 are product by process claims. Any difference imparted by the product by process limitations would have been obvious to one having ordinary skill in the art at the time the invention was made because where the examiner has found a substantially similar product as in the applied prior art, the burden of proof is shifted to



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the applicant to establish that their product is patentably distinct, not the examiner to show the same process of making. The burden is on applicants to show product differences in product by process claims, see *MPEP* sections 2112, 2113 and 2114.

9. Claims 1-4, 7, 8, 11, 12 and 15 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Mohr Jr. et al. (US 4,345,908).

Mohr, Jr. et al. teach producing stretchable woven cotton fabrics with less than 6% growth after repeated wash dry cycles (examples).

In claims 1-4, 7 and 8, the limitations "capable of surviving treatment" are simply functional language and do not distinguish the articles structurally from the prior art. It would be expected that the elastics of Mohr, Jr. et al. would inherently possess these characteristics.

In the alternative, it would have been obvious that the elastics of Mohr, Jr. et al. would encompass the claimed limitations because Mohr, Jr. et al. teach similar elastic products for similar utilities.

Claims 11, 12 and 15 are product by process claims. Any difference imparted by the product by process limitations would have been obvious to one having ordinary skill in the art at the time the invention was made because where the examiner has found a substantially similar product as in the applied prior art, the burden of proof is shifted to the applicant to establish that their product is patentably distinct, not the examiner to

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show the same process of making. The burden is on applicants to show product differences in product by process claims, see *MPEP* sections 2112,2113 and 2114.

10. Claims 1-4,7,8,11,12 and 15 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Tsuruta et al. (US 3,522,642).

Tsuruta et al. teach woven elastic fabrics with almost unchanged elasticity rates after repetition of washing (column 1, lines 1-60).

In claims 1-4,7 and 8, the limitations "capable of surviving treatment" are simply functional language and do not distinguish the articles structurally from the prior art. It would be expected that the elastics of Tsuruta et al. would inherently possess these characteristics.

In the alternative, it would have been obvious that the elastics of Tsuruta et al. would encompass the claimed limitations because Tsuruta et al. teach similar elastic products for similar utilities.

Claims 11,12 and 15 are product by process claims. Any difference imparted by the product by process limitations would have been obvious to one having ordinary skill in the art at the time the invention was made because where the examiner has found a substantially similar product as in the applied prior art, the burden of proof is shifted to the applicant to establish that their product is patentably distinct, not the examiner to show the same process of making. The burden is on applicants to show product differences in product by process claims, see *MPEP* sections 2112,2113 and 2114.

11. Claims 1-4,7 and 11-15 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Djiauw et al. (WO 01/02630)

Djiauw et al. teach textile garments which retain their integrity and elastic performance after hot water and hot cleaner dryer cycles (page 5, lines 5-10).

In claims 1-4 and 7, the limitations "capable of surviving treatment" are simply functional language and do not distinguish the articles structurally from the prior art. It would be expected that the elastics of Djiauw et al. would inherently possess these characteristics.

In the alternative, it would have been obvious that the elastics of Djiauw et al. would encompass the claimed limitations because Djiauw et al. teach similar elastic products for similar utilities.

Claims 11-15 are product by process claims. Any difference imparted by the product by process limitations would have been obvious to one having ordinary skill in the art at the time the invention was made because where the examiner has found a substantially similar product as in the applied prior art, the burden of proof is shifted to the applicant to establish that their product is patentably distinct, not the examiner to show the same process of making. The burden is on applicants to show product differences in product by process claims, see *MPEP* sections 2112,2113 and 2114.

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12. Claims 1-4,7,8 and 11-15 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Dutta et al. (US 5,529,830)

Dutta et al. teach knit or woven fabrics and clothing (column 4, lines 55-65) comprising stretchable fabric laminates (abstract). Dutta et al. further teach that the laminates provide superior wash durability (column 7, lines 5-10). Dutta et al. further teach that the laminate maintained waterproofness over 105 was cycles (column 17, example 2).

In claims 1-4 and 7, the limitations "capable of surviving treatment" are simply functional language and do not distinguish the articles structurally from the prior art. It would be expected that the elastics of Dutta et al. would inherently possess these characteristics.

In the alternative, it would have been obvious that the elastics of Dutta et al. would encompass the claimed limitations because Dutta et al. teach similar elastic products for similar utilities.

Claims 11-15 are product by process claims. Any difference imparted by the product by process limitations would have been obvious to one having ordinary skill in the art at the time the invention was made because where the examiner has found a substantially similar product as in the applied prior art, the burden of proof is shifted to the applicant to establish that their product is patentably distinct, not the examiner to show the same process of making. The burden is on applicants to show product differences in product by process claims, see *MPEP* sections 2112, 2113 and 2114.

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**Conclusion**

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amina Khan whose telephone number is (571) 272-5573. The examiner can normally be reached on Monday through Friday, 8:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Amina Khan, PhD  
March 26, 2007



LORNA M. DOUYON  
PRIMARY EXAMINER